

STATEMENT OF SENATOR JOHN McCAIN
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COMMERCE, SCIENCE, AND TRANSPORTATION
FULL COMMITTEE HEARING
ON THE EXPORT ADMINISTRATION ACT S.1712
APRIL 4, 2000

- C We are here this afternoon to hear testimony about the proposed Export Administration Act. This is a matter of great importance. I am pleased to welcome our panelists who are well informed about this topic and who can share with us their differing perspectives.
- C Attaining and maintaining the correct balance between globalized trade and protection of our national security is one of the greatest challenges of our time. As important as the substantive determination of what is the right amount of technology transfer to be allowed, is the establishment of a process which assures necessary checks and balances to result in the right substantive balance. The balance to be struck between trade and national security is often hard to determine, particularly as technologies are produced and refined ever more quickly. A process that assures a complete, competent technical and policy review, may not move at the Internet time@pace that industry desires. Still, compromise on the process in order to meet the demands of trade may unfortunately result in compromised national security.
- C We are all aware of some of the flaws of the current export system. Numerous Congressional hearings, including one held by this Committee in September 1998, have documented security lapses and illegal or ill-advised technology transfers to China. The highly publicized problems with satellite technology transfers and the apparent linkage to the 1996 campaign finance scandals have created an appearance of impropriety that demands close scrutiny of this export administration authorizing legislation.
- C It is critical that no aspect of this balancing be driven by, or perceived to be driven by, political contributions or influence. There will be no credibility behind decisions regarding particular export licenses if the process can be distorted, controlled, influenced or biased by improper motivations. Our country will have no confidence that national security is being protected if decisions are made in favor of industry as a result of campaign contributions.
- C Additionally, investigations by the Inspector Generals of the Departments of Defense, State and Commerce identified problems in June 1999 which must be addressed fully by the legislation in order to achieve the balance necessary to ensure passage. The Cox Committee recommendations, along with the Inspector General Recommendations, highlight specific areas of inquiry and revision to avoid future improprieties or errors in export decisions.

- C Some of the most pressing questions about the current process, and how S.1712 would address the same issues, include whether adequate time frames exist for referral of license applications, whether appropriate referrals are being made by the Department of Commerce for commodity classifications, as well as for license applications, whether Adeemed exports@are being appropriately controlled, whether the appeal process is biased, how cumulative impacts of licensing decisions are addressed, whether adequate monitoring and enforcement of license conditions is occurring, and whether sufficient training is provided to licensing officers in each of the agencies.
- C One example of problems in the current process that must be remedied in new legislation relates to commodity classification referrals from Commerce to State and the Department of Defense. The June 1999 Inspector General report notes that out of the thousands of commodity classification requests submitted to the Department of Commerce, between April 1996 and March 1999, Commerce referred only 12 of the requests to DOD for input. A sampling of items which were not referred, and which DOD thought should have been, included two items which could likely be munitions items.
- C The IGs from both DOC and DOD concurred that this lack of referral is a problem. To quote the IG-s report, AThe first request was for a ruggedized, portable, encrypted radios. Commerce officials stated that the radio had not been built to military standards and therefore was not a munitions item under the jurisdiction of the International Traffic in Arms Regulations. DOD officials stated that the literature described the radio as militarized and that other radios built by the manufacturer were subject to munitions export licenses. The second request was for an antenna. Commerce officials stated that the antenna was not a munitions item, despite company literature describing it as militarized. DOD officials stated that the literature satisfied International Traffic in Arms Regulations criteria for a >defense article= (munitions) and that the manufacturer had a history of exporting products under the munitions export licensing process.@
- C Clearly under the current export process, the Department of Commerce has a great deal of discretion to decide when or whether to refer a commodity classification request. This broad discretion has resulted in a dearth of referrals - and has in fact resulted in classifications decisions which are incorrect. How does the process proposed in S.1712 change this balance or provide additional checks and balances on the discretion of Commerce?
- C Similarly, the 1999 IG Report identified a bias in the appeal process as a potential problem, at least in some cases. The IG for the Department of Commerce concurred that the appeal committee chair had felt pressured by DOC management to decide some cases in favor of Commerce, regardless of the input from other agencies. While Commerce officials disputed that there had been any undue influence, the IG concluded that it is critical to the process that the appeal chair be considered objective, and recommended that such influence was not appropriate. How does the process established in S.1712 avoid any appearance of bias or

impropriety in the appeal process?

- C There are many other examples. I would like to get specific answers to how the proposed legislation addresses these issues, as well as the other recommendations made by the IG-s and the Cox Committee.
- C We also cannot look at dual-use commodity exports in a vacuum. While this legislation covers only dual-use commodities, we should consider how our policy and process on these dual-use items compares with satellites, munitions and other items covered by different statutes and regulations. Can the overall policy and national security interest be gerrymandered simply by reclassifying items, or by defining items differently? Can the Secretary of Commerce negate a classification unilaterally? Or can any of the other agencies? If we are to achieve our dual goals of promoting free trade while protecting national security we must be consistent and clear in our licensing programs. I am anxious to hear testimony that will address this concern.
- C I appreciate the difficulties in balancing which products or services can be exported without damaging national security. These are important and increasingly complex decisions in a world with rapidly changing technologies, demands for exports, and changes in foreign situations. I appreciate the hard effort that has gone into attempting to balance all of the competing interests in this legislation. Our task today is to provide a review of problems which have been identified before and consider whether they have been adequately addressed.
- C Again, I thank the witnesses for being here today and look forward to their testimony.